

(b) If, in good faith, a national bank believes that there has been an unexpected change in conditions which threatens its financial position by significantly increasing its exposure to loss, the limitations contained in paragraph (a) of this section shall not prevent the bank—

(1) As the owner and lessor under a net lease, (including a full-payout lease entered into under 12 U.S.C. 24(7)), from taking reasonable and appropriate action to salvage or protect the value of the property or its interests arising under the lease; or

(2) As the assignee of a lessor's interest in a lease, from becoming the owner and lessor of the leased property pursuant to its contractual right, or from taking any reasonable and appropriate action to salvage or protect the value of the property or its interests arising under the lease.

(c) The limitations contained in paragraph (a) of this section do not prohibit a national bank from including any provisions in a lease, or from making any additional agreements, to protect its financial position or investment in the circumstances set forth in paragraph (b) of this section.

(d) The limitations contained in paragraph (a) of this section do not prohibit a national bank from arranging for any of the services enumerated in paragraph (a) of this section to be provided by a third party to a lessee (at the expense of the lessee) with respect to property leased by the lessee.

§23.3 Investment in personal property.

(a) A national bank may acquire specific property to be leased only after the bank has entered into either:

(1) A legally binding written agreement which indemnifies the bank against loss in connection with its acquisition of the property; or

(2) A legally binding written commitment to lease the property on terms which comply with the provisions of this subpart and either subpart B or C of this part.

(b) At the expiration of the lease (including any renewals or extensions with the same lessee), or in the event of a default on a lease agreement prior to the expiration of the lease term, all of the bank's interest in the property shall either be liquidated or re-leased in conformance with this subpart and either subpart B or C of this part, as soon as practicable, but in no event later than two years from the expiration of the lease. Property which the bank retains in anticipation of re-leasing must be revalued at the lower of current fair market value or book value prior to any subsequent lease.

(c) Notwithstanding the provisions of paragraph (b) of this section, on the return of leased property at the expiration of a conforming lease term, or on the default of a lessee, a short-term bridge or interim lease is permissible if it otherwise conforms with

the net lease requirements of §23.2 of this subpart A. Such a short-term bridge or interim lease need not comply with the further requirements of subpart B or C of this part. Short-term bridge or interim leases may be used pending the sale of off-lease property, or its re-lease as a conforming long-term lease financing transaction.

§23.4 Segregation of records.

Where a national bank enters into both CEBA leases and leases under the authority of 12 U.S.C. 24(7), the bank must specifically identify any records it maintains on its CEBA leases to distinguish them from those records which the bank maintains on its leases under the authority of 12 U.S.C. 24(7).

§23.5 Application of lending limits; restrictions on transactions with affiliates.

Leasing financing transactions entered into under this part are subject to the limitations on loans or extensions of credit under 12 U.S.C. 84 and to the restrictions on transactions with affiliates under 12 U.S.C. 371c and 371c-1. The Comptroller of the Currency reserves the right to determine that such leases are also subject to the limitations of any other law, regulation or ruling.

§23.6 Consumer Leasing Act of 1976.

Nothing in this part shall be construed to be in conflict with the duties, liabilities and standards imposed by the Consumer Leasing Act of 1976, 15 U.S.C. 1667 *et seq.*

Subpart B—CEBA Leases

§23.7 General rule.

Pursuant to 12 U.S.C. 24(10), a national bank may invest in tangible personal property, including, without limitation, vehicles, manufactured homes, machinery, equipment, or furniture, for lease financing transactions on a net lease basis, or may become the owner and lessor of such tangible personal property by purchasing the property from another lessor in connection with its purchase of the related lease; provided that the requirements of subpart A of this part and this subpart are met, and the aggregate book value of all tangible personal property held for lease (under the authority of 12 U.S.C. 24(10)) does not exceed 10 percent of the consolidated assets of the national bank.

§23.8 Lease term.

(a) Lease financing transactions entered into under this subpart must have an initial term of not less than 90 days.

(b) The minimum lease term provided for in paragraph (a) of this section, shall not be applicable to the acquisition of property subject to an existing lease with a remaining maturity of less than 90 days, provided that,

at its inception, such lease was in conformance with the requirements of subpart A of this part and this subpart.

§23.9 Transition period.

(a) Lease financing transactions entered into under the authority of 12 U.S.C. 24(10) prior to July 22, 1991 may continue to be administered in accordance with the lease financing terms agreed to by the bank/lessor and lessee. With respect to the applicability of §23.5, when making new extensions of credit, including leases, to a customer, a national bank must consider all outstanding leases regardless of the date on which they were made.

(b) Any lease which was entered into in good faith prior to July 22, 1991 which does not satisfy the requirements of subpart A of this part and this subpart may be renewed without violation of this part only if there is a binding agreement in the expiring lease which requires the bank to renew it at the lessee's option, and the bank cannot otherwise reasonably or properly avoid its commitment to do so, and the bank in good faith determines and demonstrates, by full documentation, that renewal of the lease is necessary to avoid significant financial loss and recover its total investment in, plus the cost of financing, the property.

Subpart C—Leases Under the Authority of 12 U.S.C. 24(7)

§23.10 General rule.

Pursuant to 12 U.S.C. 24(7), a national bank may become the legal or beneficial owner and lessor of specific personal property or otherwise acquire such property; or become the owner and lessor of personal property by purchasing the property from another lessor in connection with its purchase of the related lease; and incur obligations incidental to its position as the legal or beneficial owner and lessor of the leased property; provided that the lease is a net, full-payout lease representing a noncancelable obligation of the lessee, notwithstanding the possible early termination of that lease, and the requirements of subpart A of this part and this subpart are met.

§23.11 Maximum estimated residual value.

(a) Any unguaranteed portion of the estimated residual value relied upon by the bank to yield a full return under this subpart shall not exceed 25 percent of the original cost of the property to the lessor. The amount of any estimated residual value guaranteed by the manufacturer, the lessee, or a third party which is not an affiliate (as defined by 12 U.S.C. 371c) of the bank, may exceed 25 percent of the original cost of the property, where the bank has determined, and can provide full, supporting documentation, that

the guarantor has the resources to meet the guarantee.

(b) Calculations of estimated residual value on leases of personal property to Federal, State, or local governmental entities may be based on reasonably anticipated future transactions or renewals.

(c) In all cases, both the estimated residual value of the property and that portion of the estimated residual value relied upon by the lessor to satisfy the requirements of a full-payout lease must be reasonable in light of the nature of the leased property and all relevant circumstances so that realization of the lessor's full investment plus the cost of financing the property primarily depends on the creditworthiness of the lessee and any guarantor of the residual value, and not on the residual market value of the leased item.

§23.12 Transition rule.

This part shall not apply to any leases executed prior to June 12, 1979. With respect to the applicability of §23.5, when making new extensions of credit, including leases, to a customer, a national bank must consider all outstanding leases regardless of the date on which they were made. Any lease which was entered into in good faith prior to such date which does not satisfy the requirements of this part may be renewed without violation of this part only if there is a binding agreement in the expiring lease which requires the bank to renew it at the lessee's option, and the bank cannot otherwise reasonably or properly avoid its commitment to do so, and the bank in good faith determines and demonstrates, by full documentation, that renewal of the lease is necessary to avoid significant financial loss and recover its total investment in, plus the cost of financing, the property.

PART 24—COMMUNITY DEVELOPMENT CORPORATIONS, COMMUNITY DEVELOPMENT PROJECTS, AND OTHER PUBLIC WELFARE INVESTMENTS

Sec.

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AUTHORITY: 12 U.S.C. 24(Eleventh), 93a, 481 and 1818.

SOURCE: 61 FR 49660, Sept. 23, 1996, unless otherwise noted.